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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

NOV 17 2016

November 9, 2016

Norma Bailey
Chris Giron
Rolando Escobar, Manager
Mill Man Steel, Inc.
15585 Arrow Route
Fontana, CA 92335

Scott Clary
Mill Man Steel, Inc.
1441 Wazee Street, Suite 104
Denver, CO 80202

VIA FIRST CLASS MAIL

Maric Mellor, Registered Agent for Mill Man Steel, Inc.
(Entity Number C1948541)
6800 Indiana Ave., Ste. 200
Riverside, CA 92506

**Re: Notice of Violations and Intent to File Suit under the Federal Water
Pollution Control Act**

Dear Ms. Bailey and Messrs. Giron, Escobar, and Clary and/or the current managers of Mill
Man Steel, Inc.:

I am writing on behalf of Center for Community Action and Environmental Justice
("CCA EJ") in regard to violations of the Clean Water Act (the "Act") that CCA EJ believes are
occurring at Mill Man Steel, Inc.'s industrial facility located at 15585 Arrow Route in Fontana,
California ("Facility"). CCA EJ is a non-profit public benefit corporation dedicated to working
with communities to advocate for environmental justice and pollution prevention. CCA EJ has
members living in the community adjacent to the Facility and the Santa Ana River Watershed.
CCA EJ and its members are deeply concerned with protecting the environment in and around

Notice of Violations and Intent to File Suit

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their communities, including the Santa Ana River Watershed. This letter is being sent to Mill Man Steel, Inc., Norma Bailey, Chris Giron, Rolando Escobar, and Scott Clary as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as "Mill Man").

This letter addresses Mill Man's unlawful discharge of pollutants from the Facility into channels that flow into the Santa Ana River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 97-03-DWQ ("1997 Permit") as renewed by Order No. 2015-0057-DWQ ("2015 Permit"). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CCAEJ refers to the 1997 and 2015 Permits in this letter collectively as the "General Permit." The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Santa Ana Region ("Regional Board") is 8 33I002605. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA") and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CCAEJ hereby places Mill Man on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CCAEJ intends to file suit in federal court against Mill Man under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

In its Notice of Intent to Comply with the Terms of the General Permit ("NOI"), Mill Man certifies that the Facility is classified under SIC code 3441. The Facility collects and discharges storm water from its 3-acre industrial site through at least one outfall. On information and belief, CCAEJ alleges the outfall contains storm water that is commingled with runoff from the Facility from areas where industrial processes occur. On information and belief, CCAEJ alleges that the outfall discharges to channels that empty into the West Fontana Channel, which flows into the San Sevaine Creek, which then flows into Reach 3 of the Santa Ana River.

The Regional Board has identified beneficial uses of the Santa Ana River and established water quality standards for it and its tributaries in the "Water Quality Control Plan for the Santa Ana River Basin (Region 8)," generally referred to as the Basin Plan. *See*

http://www.swrcb.ca.gov/rwqcb8/water_issues/programs/basin_plan/index.shtml. The beneficial uses of these waters include, among others, groundwater recharge, water contact recreation, non-contact water recreation, wildlife habitat, warm freshwater habitat, and rare, threatened or endangered species.

The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” *Id.* at 3-3. Contact recreation use includes fishing and wading. *Id.*

The Basin Plan includes a narrative toxicity standard which states that “[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health.” *Id.* at 4-20. The Basin Plan includes a narrative oil and grease standard which states that “[w]aste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses.” *Id.* at 4-14. The Basin Plan includes a narrative suspended and settleable solids standard which states that “Inland surface waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses...” *Id.* at 4-16. The Basin Plan provides that “[t]he pH of inland surface waters shall not be raised above 8.5 or depressed below 6.5...” *Id.* at 4-18. The Basin Plan contains a narrative floatables standard which states that “[w]aste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses.” *Id.* at 4-10. The Basin Plan contains a narrative color standard which states that “[w]aste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses.” *Id.* at 4-10.

The EPA has adopted a freshwater numeric water quality standard for zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”). 65 Fed.Reg. 31712 (May 18, 2000) (“California Toxics Rule” or “CTR”).¹

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).² The following benchmarks have been established for pollutants discharged by Mill Man: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; zinc – 0.26 mg/L; aluminum – 0.75 mg/L; nitrate + nitrite as nitrogen (“N+N”) – 0.68 mg/L; and iron – 1.0 mg/L.

¹ The value for zinc is also hardness dependent, and correspond to a total hardness of 100-125 mg/L, which is the default listing in the California Toxics Rule.

² The Benchmark Values can be found at:

http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels ("NALs"). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L; O&G – 15 mg/L; zinc – 0.26 mg/L; aluminum – 0.75 mg/L; N+N – 0.68 mg/L; and iron – 1.0 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease ("O&G") – 25 mg/L.

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit

Mill Man has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Mill Man has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, aluminum, N+N, zinc, and iron in violation of the General Permit. Mill Man's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained concentrations of zinc in excess of the applicable numerical water quality standard established by the EPA and observations of pollutant in violation of the applicable narrative water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration	CTR value / Basin Plan Water Quality Objective	Outfall (as identified by the Facility)
12/11/2015	Zinc	0.66 mg/L	0.12 mg/L (CMC)	End of Asphalt
11/27/2015	Zinc	0.68 mg/L	0.12 mg/L (CMC)	End of Asphalt
11/29/2012	Narrative	Cloudy	Basin Plan at 4-16	Southwest Corner
10/31/2012	Narrative	Cloudy	Basin Plan at 4-16	Southwest Corner
4/3/2012	Narrative	Slightly cloudy	Basin Plan at 4-16	SW
3/26/2012	Narrative	Slightly cloudy	Basin Plan at 4-16	SW
1/23/2012	Narrative	Slightly cloudy	Basin Plan at 4-16	SW
12/12/2011	Narrative	Slightly cloudy	Basin Plan at 4-16	SW

The information in the above table reflects data gathered from Mill Man's self-monitoring during the 2011-2012 and 2012-2013 wet seasons, as well as the 2015-2016 reporting year. CCAEJ alleges that since at least December 12, 2011, and continuing through today, Mill Man has discharged storm water contaminated with pollutants at levels that were in excess of the CMC value for zinc of 0.12 mg/L, and violated the narrative water quality standard for suspended/settleable solids which provides that waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses. (Basin Plan at 4-16).

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value /Annual NAL	Outfall (as identified by the Facility)
12/11/2015	Total Suspended Solids	270 mg/L	100 mg/L	End of Asphalt
11/27/2015	Total Suspended Solids	280 mg/L	100 mg/L	End of Asphalt
2015-2016 reporting year	Total Suspended Solids	275 mg/L	100 mg/L	All discharge points ³
12/11/2015	Aluminum	7.8 mg/L	0.75 mg/L	End of Asphalt
11/27/2015	Aluminum	6.9 mg/L	0.75 mg/L	End of Asphalt
2015-2016 reporting year	Aluminum	7.35 mg/L	0.75 mg/L	All discharge points ⁴
12/11/2015	Nitrate + Nitrite as Nitrogen	1.1 mg/L	0.68 mg/L	End of Asphalt
2015-2016 reporting year	Nitrate + Nitrite as Nitrogen	1.1 mg/L	0.68 mg/L	All discharge points ⁵
12/11/2015	Zinc	0.66 mg/L	0.26 mg/L	End of Asphalt
11/27/2015	Zinc	0.68 mg/L	0.26 mg/L	End of Asphalt
2015-2016 reporting year	Zinc	0.69 mg/L	0.26 mg/L	All discharge points ⁶
12/11/2015	Iron	13 mg/L	1.0 mg/L	End of Asphalt
11/27/2015	Iron	13 mg/L	1.0 mg/L	End of Asphalt
2015-2016 reporting year	Iron	13 mg/L	1.0 mg/L	All discharge points ⁷

The information in the above table reflects data gathered from Mill Man's self-monitoring during the 2015-2016 reporting year. Further, CCAEJ notes that for the 2015-2016

³ This value represents the average of all TSS measurements taken at the Facility during the 2015-2016 reporting year and is higher than 100 mg/L, the annual NAL for TSS.

⁴ This value represents the average of all aluminum measurements taken at the Facility during the 2015-2016 reporting year and is higher than 0.75 mg/L, the annual NAL for aluminum.

⁵ This value represents the average of all N+N measurements taken at the Facility during the 2015-2016 reporting year and is higher than 0.68 mg/L, the annual NAL for N+N.

⁶ This value represents the average of all zinc measurements taken at the Facility during the 2015-2016 reporting year and is higher than 0.26 mg/L, the annual NAL for zinc.

⁷ This value represents the average of all iron measurements taken at the Facility during the 2015-2016 reporting year and is higher than 1.0 mg/L, the annual NAL for iron.

reporting year, the Facility has exceeded the annual NALs for TSS, aluminum, N+N, zinc, and iron. CCAEJ alleges that since at least November 9, 2011, Mill Man has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for pH, TSS, aluminum, N+N, zinc, and iron.

CCAIEJ's investigation, including its review of Mill Man's Storm Water Pollution Prevention Plan ("SWPPP"), Mill Man's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that Mill Man has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, aluminum, zinc, N+N, iron, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. Mill Man was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Mill Man is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CCAIEJ alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since November 9, 2011, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CCAIEJ alleges that Mill Man has discharged storm water containing impermissible and unauthorized levels of pH, TSS, aluminum, N+N, zinc, and iron in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.⁸

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of pH, TSS, aluminum, zinc, N+N, iron, and storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water

⁸ The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Riverside, approximately 12.9 miles from the Facility. The data was accessed via http://ipm.ucanr.edu/calludt.cgi/WXDESCRIPTION?STN=UC_RIVER.A (Last accessed on November 8, 2016).

Act, Mill Man is subject to penalties for violations of the General Permit and the Act since November 9, 2011.

Further, CCAEJ puts Mill Man on notice that 2015 Permit Effluent Limitation V(A) is a separate, independent requirement with which Mill Man must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Permit's Effluent Limitations, including Mill Man's obligation to have installed BAT and BCT at the Facility. While exceedances of the NALs demonstrate that a facility is among the worst performing facilities in the State, the NALs do not represent technology based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT.⁹ Finally, even if Mill Man submits an Exceedance Response Action Plan(s) pursuant to Section XII of the 2015 Permit, the violations of Effluent Limitation V(A) described in this Notice Letter are ongoing.

B. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program for the Facility.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. See 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. See 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that best management practices ("BMPs") are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

⁹ "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. See 2015 Permit, Section XII.

i. Failure to Conduct Sampling and Analysis

The 1997 Permit requires dischargers to collect storm water samples from all storm water discharge locations during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect samples from two other storm events and “shall explain in the Annual Report why the first storm event was not sampled.” *See* 1997 Permit, § B(5)(a). The Facility has repeatedly violated these monitoring requirements.

On information and belief, CCAEJ alleges that Mill Man failed to sample storm water discharges from the Facility during the 2011-2012, 2012-2013, 2013-2014, and 2014-2015 wet seasons. During each of those wet seasons, Mill Man failed to sample any of the storm water discharges from the Facility. On the Annual Report for each respective wet season, Mill Man indicated that it did not sample *any* discharges because all of the water from the Facility is commingled with water from a neighboring property, and that in accordance with Section B.7.b of the 1997 Permit, Mill Man was not required to perform sampling. Section B.7.b of the 1997 Permit states the following:

If the facility’s storm water discharges are commingled with run-on from surrounding areas, the facility operator should identify other visual observation and sample collection locations that have not been commingled by run-on and that represent the quality and quantity of the facility’s storm water discharges from the storm event.

On information and belief, CCAEJ alleges that Mill Man’s storm water discharges are not commingled with run-on from neighboring properties. In addition, reliance of Section B.7.b of the 1997 Permit does not absolve Mill Man from collecting and analyzing its storm water discharges. That section *requires* Mill Man to “identify other ... sample collection locations that have not been commingled by run-on and that represent the quality and quantity of the facility’s storm water discharges from the storm event.” On information and belief, CCAEJ alleges that Mill Man has not made any demonstrations on its Annual Reports, or elsewhere, that indicate it has identified other sample collection locations that have not been commingled by run-on. Therefore, CCAEJ alleges that Mill Man has continually failed to sample its storm water discharges.

In addition, during the 2015-2016 reporting year, Mill Man only collected and analyzed samples from two storm water discharges from the Facility, failing to collect and analyze any

samples during the latter half of that year. However, on information and belief, based on local precipitation data compared to the Facility's past reported dates of storm water discharges, CSPA alleges that storm water discharges occurred at the Facility on the following dates during the latter half of the 2015-2016 reporting year:

- January 6, 2016
- February 17, 2016
- March 11, 2016
- April 8, 2016

Therefore, CCAEJ alleges that Mill Man failed to collect and analyze samples from four storm water discharges from the Facility during the 2015-2016 reporting year.

CCAIEJ also notes that facilities with an SIC Code of 3441, like Mill Man, are required to analyze their storm water discharges for N+N. 2015 Permit, Table 1. CCAIEJ alleges that Mill Man failed to analyze its November 27, 2015 storm water discharge for N+N.

The above results in at least 11 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Mill Man is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since at least November 9, 2011.

ii. Failure to Conduct Visual Observations of Storm Water Discharges

Section B of the 1997 Permit describes the visual monitoring requirements for storm water discharges. Facilities are required to make monthly visual observations of storm water discharges from all drainage areas (Section B(4)). Section B(7) requires that the visual observations must represent the "quality and quantity of the facility's storm water discharges from the storm event." The requirement to make visual observations of storm water discharges from each drainage area is continued in Section XI(A) of the 2015 Permit.

On information and belief, CCAIEJ alleges that Mill Man failed to conduct monthly visual observations of storm water discharges during numerous months during the past five years. On information and belief, based on precipitation data compared to the dates in which the Facility did conduct monthly visual observation of storm water discharges, CCAIEJ alleges that Mill Man failed to conduct monthly visual observations of storm water discharges at its storm water discharge locations during at least the following months:

- 2012 – February
- 2014 – November, December
- 2015 – January, April, May

Therefore, CCAEJ alleges that Mill Man failed to conduct monthly visual observations of storm water discharges at the Facility during those months.

The above results in at least 6 violations of the General Permit. These violations of the General Permit are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Mill Man is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since November 9, 2011.

C. Failure to Complete Annual Comprehensive Site Compliance Evaluation

The 1997 Permit, in relevant part, requires that the Annual Report include an Annual Comprehensive Site Compliance Evaluation Report ("ACSCE Report"). (Section B(14)). As part of the ACSCE Report, the facility operator must review and evaluate all of the BMPs to determine whether they are adequate or whether SWPPP revisions are needed. The Annual Report must be signed and certified by a duly authorized representative, under penalty of law that the information submitted is true, accurate, and complete to the best of his or her knowledge. The 2015 Permit now requires operators to conduct an Annual Comprehensive Facility Compliance Evaluation ("Annual Evaluation") that evaluates the effectiveness of current BMPs and the need for additional BMPs based on visual observations and sampling and analysis results. See 2015 Permit, § XV.

Information available to CCAEJ indicates that Mill Man has consistently failed to comply with Section B(14) of the 1997 Permit, and Section XV of the 2015 Permit. None of the Facility's ACSCE Reports provide an explanation of the Facility's failure to take steps to reduce or prevent high levels of pollutants observed in the Facility's storm water discharges. See 1997 Permit Receiving Water Limitation C(3) and C(4) (requiring facility operators to submit a report to the Regional Board describing current and additional BMPs necessary to prevent or reduce pollutants causing or contributing to an exceedance of water quality standards); see also 2015 Permit § X(B)(1)(b). The failure to assess the Facility's BMPs and respond to inadequacies in the ACSCE Reports negates a key component of the evaluation process required in self-monitoring programs such as the General Permit. Instead, Mill Man has not proposed any BMPs that properly respond to EPA benchmark and water quality standard exceedances, in violation of the General Permit.

CCAIEJ puts Mill Man on notice that its failures to submit accurate and complete ACSCE Reports are violations of the General Permit and the CWA. Mill Man is in ongoing violation of Section XV of the 2015 Permit every day the Facility operates without evaluating the effectiveness of BMPs and the need for additional BMPs. These violations are ongoing. Each of these violations is a separate and distinct violation of the General Permit and the CWA. Mill Man is subject to civil penalties for all violations of the CWA occurring since at least November 9, 2011.

D. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Under the General Permit, the State Board has designated the SWPPP as the cornerstone of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit, Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations and receiving water limitations. See 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. See 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure

minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. *See* 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. *See* 2015 Permit § X(H)(4), (5).

Despite these clear BMP requirements, Mill Man has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to include any BMPs to minimize or prevent material tracking. The SWPPP fails to include BMPs to minimize dust generated from industrial materials or activities. The SWPPP fails to include BMPs that cover all stored industrial materials that can be readily mobilized by contact with storm water. The SWPPP fails to include required advanced BMPs. The SWPPP fails to describe any efforts to implement and maintain minimum BMPs. In addition, CCAEJ notes that the SWPPP indicates that "COD" is a potential pollutant from the dumpster and roll-offs. On information and belief, CCAEJ alleges that COD is not present at the Facility.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges. Despite these exceedances, Mill Man has failed to sufficiently update and revise the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement proper BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges.

CCAIEJ puts Mill Man on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CCAIEJ will include additional violations as information and data become available. Mill Man is subject to civil penalties for all violations of the CWA occurring since November 9, 2011.

III. Persons Responsible for the Violations.

CCAIEJ puts Mill Man Steel, Inc., Norma Bailey, Chris Giron, Rolando Escobar, and Scott Clary on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CCAIEJ puts Mill Man Steel, Inc., Norma Bailey, Chris Giron, Rolando Escobar, and Scott Clary on notice that it intends to include those subsequently identified persons in this action.

Ms. Bailey and Messrs. Giron, Esacabar, and Clary
Mill Man Steel, Inc.
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IV. Name and Address of Noticing Parties.

The name, address and telephone number of the Center for Community Action and Environmental Justice is as follows:

Penny Newman
Executive Director
Center for Community Action and Environmental Justice
P.O. Box 33124
Jurupa Valley, CA 92519
Tel. (951) 360-8451

V. Counsel.

CCAIEJ has retained legal counsel to represent it in this matter. Please direct all communications to:

Douglas J. Chermak
Michael R. Lozeau
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, California 94607
Tel. (510) 836-4200
doug@lozeaudrury.com
michael@lozeaudrury.com

VI. Penalties.

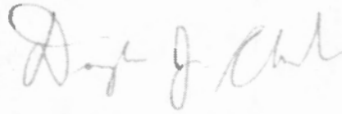
Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Mill Man to a penalty of up to \$37,500 per day per violation for all violations occurring since October 28, 2011 up to and including November 2, 2015, and up to \$51,570 for violations occurring after November 2, 2015. In addition to civil penalties, CCAIEJ will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CCAIEJ believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CCAIEJ intends to file a citizen suit under Section 505(a) of the Act against Mill Man and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CCAIEJ would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CCAIEJ suggests that you initiate those discussions

Ms. Bailey and Messrs. Giron, Esacabar, and Clary
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within the next 20 days so that they may be completed before the end of the 60-day notice period. CCAEJ does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

A handwritten signature in dark ink, appearing to read "Doug J. Chermak", written in a cursive style.

Douglas J. Chermak
Lozeau Drury LLP
Attorneys for Center for Community Action and
Environmental Justice

SERVICE LIST – via certified mail

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Loretta Lynch, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Alexis Strauss, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Kurt V. Berchtold, Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

ATTACHMENT A
Rain Dates, Mill Man Steel, Inc., Fontana, CA

	3/8/2013	5/14/2015
11/4/2011	5/6/2013	7/18/2015
11/6/2011	10/9/2013	7/19/2015
11/12/2011	11/21/2013	9/9/2015
11/20/2011	12/7/2013	9/15/2015
12/12/2011	2/6/2014	10/4/2015
1/21/2012	2/28/2014	10/5/2015
1/23/2012	3/1/2014	11/2/2015
2/15/2012	4/1/2014	11/25/2015
2/27/2012	4/2/2014	12/13/2015
3/17/2012	4/25/2014	12/19/2015
3/18/2012	8/20/2014	12/22/2015
4/11/2012	11/21/2014	12/29/2015
4/13/2012	12/2/2014	1/5/2016
4/25/2012	12/3/2014	1/6/2016
4/26/2012	12/4/2014	1/7/2016
8/30/2012	12/12/2014	1/31/2016
10/11/2012	12/17/2014	2/17/2016
11/8/2012	12/30/2014	3/6/2016
12/12/2012	1/11/2015	3/7/2016
12/13/2012	1/26/2015	3/11/2016
12/24/2012	2/22/2015	4/8/2016
12/29/2012	2/23/2015	10/23/2016
1/24/2013	3/2/2015	10/24/2016
1/25/2013	4/7/2015	
2/8/2013	4/25/2015	
2/19/2013	5/8/2015	